

Notice of Allowability**Application No.**

10/705,633

Applicant(s)

MADISON, EDWIN L.

Examiner

Sheridan K Snedden

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to ____.
2. ☒ The allowed claim(s) is/are 32-37, 40 and 41.
3. ☒ The drawings filed on 11/10/2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date ____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>6/24/2004</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

Art Unit: 1653

DETAILED ACTION

1. Applicant's amendments to the specification and claims filed 10 November 2003 is acknowledged. Claims 1-31 are canceled. Applicant's addition of new claims 32-41 is acknowledged.
2. Applicant's amendments to the specification and claims filed 30 September 2004 is acknowledged. Applicant's amendment of claims 32, 35 and 38 is acknowledged.
3. Claims 32-41 are under examination.

Election/Restrictions

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 32-37, 40-41, drawn to a polynucleotide, vector, cell and method of making protein, classified in class 435, subclass 69.1.
 - II. Claims 38, drawn to a diagnostic kit comprising antibodies, classified in class 530, subclass 387.1.
 - III. Claim 39, drawn to a diagnostic kit comprising polynucleotides, classified in class 536, subclass 23.1.
5. The inventions are distinct, each from the other because of the following reasons:

Each of inventions I through III are directed to patentably distinct and/or independent biomolecules. Absent factual statement/evidence to the contrary, each of the different biomolecules are considered distinct and/or independent, one from the other on the basis of physical, chemical and biological properties and function(s).

Art Unit: 1653

6. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II-III, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Michael McCarthy on October 25, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 32-37, 40-41. Affirmation of this election must be made by applicant in replying to this Office action. Claims 38 and 39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael McCarthy on October 25, 2004.

9. The application has been amended as follows:

Claims 38 and 39 are cancelled.

Art Unit: 1653

Reasons for Allowance

10. The following is an examiner's statement of reasons for allowance: A standard search did not produce any prior art that suggests or teaches the claimed invention. Thus, the claimed invention is novel and nonobvious over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

11. Claims 32-37, 40-41 are allowed.

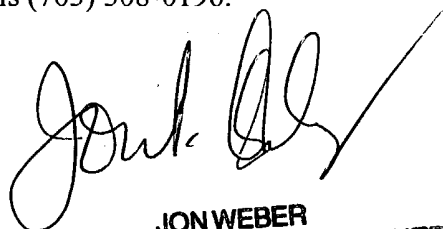
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (703) 305-4843. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for regular communications to the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS
October 25, 2004

SKS


JON WEBER
SUPERVISORY PATENT EXAMINER